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OSC 60-0493(a)

5 May 1960

MEMORANDUM FOR: Chief, Administrative Staff  
Office of Communications  
  
SUBJECT: Storage of Household Effects

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1. We have your memorandum of 6 April 1960 referring to the proposed shipment of household effects of Mr. [REDACTED]. With reference to the provisions of paragraphs 5 and 7 of [REDACTED] you ask whether Mr. [REDACTED] may ship to his new PCS post in [REDACTED] an amount of household effects in excess of the "Table II Allowances" but less than the "Table I Allowances" and simultaneously store his remaining household effects, which, taken together with the amount shipped, do not exceed the over-all amount allowed in Table I. For the reasons which follow we think the answer is in the affirmative.

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a. Paragraph 4(a)(1)(D) of the Central Intelligence Agency Act of 1949 states:

"Under such regulations as the Director may prescribe, the Agency, with respect to its officers and employees assigned to permanent duty stations outside the continental United States, its territories, and possessions, shall pay the cost of storing the furniture and household and personal effects of an officer or employee of the Agency who is absent under orders from his usual post of duty, or who is assigned to a post to which, because of emergency conditions, he cannot take or at which he is unable to use, his furniture and household and personal effects."

The alleged restriction on [REDACTED] shipment is found in the statement in paragraph 7B of [REDACTED] that "nontemporary storage will not be authorized when the gross weight or volume shipped to the overseas post exceeds the weight or volume listed in Table II." The Table II allowances represent partial shipments; employees are held to these when they are going to posts where furnished quarters are provided by the Government. (See paragraph 5B.) Taken in context, the quoted provisions in paragraph 7B mean that the employee who wishes to ship to unfurnished quarters more than is allowed to furnished quarters is denied the statutory benefit.

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b. Another effect of this regulation: If the employee who elects to confine his household effects shipment to the Table II level makes a miscalculation (or if the packer uses unusually heavy materials) and the gross weight exceeds the Table II limit, he

is diverted of his right to be reimbursed for a storage of his remaining effects. This would ordinarily not be learned by the employee until after he had reached his new post and was so far away from his goods in storage that there was little he could do about the whole matter. In our opinion, requiring the employee to take such a risk is unconscionable.

- c. Another unfortunate result of this provision is that the employee who exceeds the Table II allowance, though barred from storing the balance at Government expense, is nevertheless authorized to ship it to his destination at Government expense, which is more expensive to the Government than the storage would have been. He thus must elect between (a) storing at his own expense, or (b) shipping to his new post things which he does not want, or cannot use, and which the Agency presumably does not wish to ship.

2. It is the primary function of administrative regulations to fill in the details necessary to the implementation of statutory objectives. Under language such as found in section 4 of the Central Intelligence Agency Act, quoted above, the scope of regulatory authority is broad indeed. Nevertheless, regulations must be written in harmony not only with the express provisions of the statute under which they are issued, but also with the broad objectives of the statute. They may not operate to negate the statute and thus frustrate the will of Congress. In the case at hand, the statute confers a positive legal right on the employee and places a mandate on the Agency to confer the benefit - that is, the storage at Government expense of household effects he cannot use at his prospective post in an emergency area. Consistent with what we have said above, the Agency may by regulations place reasonable limits on individuals as to time, manner, place, amount, etc., of storage, but it cannot impose restrictions which have the effect of unjustly denying the statutory benefit to a large class of employees.

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3. Agency Regulation [ ] sets reasonable standards of household effects weights in Table I, and then, as to storage, denies application of these standards to persons who exceed the limited shipments authorized to furnished quarters (under Table II). In fact, the regulation makes no direct provision for storage at Government expense of the effects of persons going to unfurnished quarters in emergency areas. We have had occasion previously to object to a comparable omission from [ ] the predecessor of [ ] on this subject. In our memorandum to Chief, Transportation Division, Office of Logistics, dated 2 July 1959, subject-- Proposed Revision of [ ] we stated:

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"A regulation may not set different standards of entitlement which artificially and unreasonably discriminates between various categories of employees. For instance, former paragraph 11 of [ ] provided for storage of effects at Government expense for employees going to furnished quarters in emergency areas but not for those going to unfurnished quarters in the same areas. This unreasonably discriminates against the latter class, who may be in no less need of the benefit than the former."

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4. For the reasons above, to the extent that [redacted] would deny to an employee going to a post which is in an emergency area, and at which furnished quarters are not provided, the storage benefit provided by the statute, on the sole grounds that his household effects exceeded weight restrictions lower than those imposed by Table I, the regulatory provision quoted in paragraph 1a above cannot stand. The Office of Logistics has proposed an amendment to the regulation deleting the objectionable language. Until final coordination and issuance of that proposal, this memorandum is sufficient authority for the storage requested by [redacted]. He may ship household effects within the over-all weight limits specified by the regulation, and any of his household effects, within those limits, which he cannot use at his destination may be stored at Government expense according to the formula provided by the regulations.

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SIGNED  
[redacted]

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Office of General Counsel

cc: Chief, Finance  
Director of Logistics  
Chief, HE Support  
SSA-DD/S